

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NEIL GAIMAN, and
MARVELS AND MIRACLES, LLC,

Plaintiffs,

vs.

Case No. 02-CV-048-BBC

TODD MCFARLANE, TODD
MCFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC.,
MCFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Madison, Wisconsin
June 14, 2010
1:00 p.m.

Defendants.

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STENOGRAPHIC TRANSCRIPT OF MOTION HEARING
AFTERNOON SESSION
HELD BEFORE THE HONORABLE BARBARA B. CRABB

APPEARANCES:

For the Plaintiffs: Foley & Lardner, LLP
BY: ALLEN ARNTSEN
JEFFREY A. SIMMONS
150 East Gilman Street
Post Office Box 1497
Madison, Wisconsin 53701

Kenneth F. Levin & Associates
BY: KENNETH F. LEVIN
20 North Wacker Drive, Suite 2200
Chicago, Illinois 60606

CHERYL A. SEEMAN, RMR, CRR
Official Court Reporter
United States District Court
120 North Henry Street, Room 520
Madison, Wisconsin 53703
1-608-255-3821

For the Defendants: Bryan Cave, LLP
BY: JAMES ALEX GRIMSLEY
Two North Central Avenue
Suite 2200
Phoenix, Arizona 85004

Godfrey & Kahn, S.C.
BY: TODD SMITH
One East Main Street, Suite 500
P.O. Box 2719
Madison, Wisconsin 53701

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1 THE COURT: Mr. Arntsen, then are you
2 resting?

3 MR. ARNTSEN: Yes. The only other matter is
4 the admission of exhibits. And what I propose is that
5 all of the exhibits that the witnesses are asked about
6 just be admitted. Do you have any problem with that?

7 MR. GRIMSLEY: I don't have a problem with
8 that. I actually thought we were probably going to
9 admit more than that even.

10 THE COURT: Sounds fine. All right.

11 MR. ARNTSEN: Okay. At least all the
12 exhibits the witnesses are asked about.

13 THE COURT: And, Mr. Grimsley, you may call
14 your first witness.

15 MR. GRIMSLEY: We call Brian Holguin.

16 BRIAN HOLGUIN, DEFENDANTS' WITNESS, SWORN

17 BY MR. GRIMSLEY:

18 Q. Sir, could you just state your full name for the
19 record, please?

20 A. Yes. My name is Brian Phillip Holguin.

21 Q. And you were a writer on the *Spawn: The Dark Ages*
22 series?

23 A. Yes, I was. I was the original writer.

24 Q. I would like to start off by showing you Exhibit
25 42. Before the lunch break, Mr. Gaiman said that he

1 didn't recognize that character. Could you identify
2 that character in Exhibit 42?

3 A. Yes. This is Lord Covenant. He is the
4 protagonist, the main character, of the comic book
5 *Spawn: The Dark Ages*.

6 Q. Okay. And as you understand it, that's the
7 character that Mr. Gaiman is contending is derivative
8 of --

9 A. About what all this fuss is about.

10 MR. ARNTSEN: I will object, leading.

11 THE COURT: Sustained. Start again.

12 BY MR. GRIMSLEY:

13 Q. Sure. Do you have an understanding as to what
14 the importance is of Dark Ages Spawn in the context of
15 this proceeding?

16 A. I think I do generally, yes.

17 Q. Okay. Can you tell me what that is?

18 A. There is a dispute over whether Medieval Spawn
19 and the character in *Spawn: The Dark Ages* are
20 essentially interchangeable, as I understand it.

21 Q. And we previously marked Exhibit 22 as the first
22 issue of *Spawn: The Dark Ages*. And you wrote that
23 issue?

24 A. Yes, I did. I believe I wrote the first 14
25 issues of the series.

1 Q. Before writing *Spawn: The Dark Ages*, had you
2 worked on other comics for Todd McFarlane Productions?

3 A. Yes. I had worked on a comic called
4 *Kiss: Psycho Circus* and I worked on the original
5 *Spawn*, the flagship title.

6 Q. Before working on *Spawn: The Dark Ages*, had you
7 worked on comics for other companies?

8 A. Yes. I have been working in the comics industry
9 since 1995 or '96, I'm not quite sure.

10 Q. Okay. And what are some of the other titles that
11 you worked on?

12 A. *Aria*, *Cyberforce*, *Mr. Majestic*, *More Than Mortal*.

13 Q. Okay. Before working as a writer, were you a
14 *Spawn* fan?

15 A. I wasn't -- I was a comical fan. I wasn't
16 particularly a *Spawn* fan. I was certainly aware of
17 it.

18 Q. Okay. Growing up, what was your favorite comic
19 book?

20 A. Probably *Thor* marvel comic book.

21 Q. Now, when you say you wrote *Spawn: The Dark Ages*
22 or the first book, was it 14 issues?

23 A. Mm-mm.

24 Q. Does that include all of the dialogue for all the
25 different characters?

1 A. All the dialogue, all the narration and also
2 conceiving and constructing the plot. It's similar
3 to -- vaguely similar to writing a film script where
4 you are giving directions. I did final occasions --
5 is it day or night, indoor/outdoor, rainy/sunny, who
6 is there, what they are wearing and what occurs as
7 well as writing all the dialogue bits.

8 Q. And you created the character *Lord Covenant*?

9 A. I would say I cocreated. Liam Sharp, who was the
10 artist, certainly had a hand in creating the visual
11 look. And the entire concept was obviously inspired
12 by Mr. McFarlane's character, Spawn.

13 Q. And so you and the artist created Lord Covenant
14 both as a Hellspawn and in his preexisting life,
15 correct?

16 A. That's correct.

17 Q. And you said that, I believe, it also had some
18 connection to the sort of preexisting Al Simmons'
19 Spawn that spurred the entire series that
20 Mr. McFarlane had created?

21 A. That's correct, yes.

22 Q. Okay. Were there particular elements of the Dark
23 Ages Spawn character that you took from the original
24 Spawn?

25 A. Well, the way I would put it is concurrently with

1 writing *Dark Ages*, I was writing, as I said, the
2 flagship title, the main *Spawn* book. And I believe I
3 started around Issue 70, which is quite a few years
4 after, you know, Issue 9, the issues you had been
5 talking about earlier.

6 And one of the things I wanted to do was to
7 expand the *Spawn* Universe and look at the themes that
8 were explored in the main book and explore them
9 further in the context of the new book, and so the
10 character of Lord Covenant had many psychological and
11 emotional similarities to Al Simmons as well as having
12 differences.

13 Q. What were some of the similarities?

14 A. Well, Al Simmons, one of the things that
15 intrigued me about him was the character is
16 essentially a good man. He is a loving husband, good
17 neighbor, but he is also a paid assassin. He is a
18 government contract killer. And his rationale is
19 that, well, I'm only killing the bad people. And if
20 they didn't send me -- you know, there is a reason
21 they are sending me after these people, and this is a
22 reason why he is condemned to Hell and finds himself
23 being a Hellspawn.

24 Similarly, Lord Covenant was a killer for what he
25 thought was a good reason. He joined the Crusades.

1 He believed it was his religious duty to travel over
2 to the Holy Land and kill infidels. And when he dies,
3 there is a scene in there, and probably the most
4 dramatic scene in the first issue, where he is fully
5 expecting to go to Heaven to be rewarded for all the
6 people he has murdered and is somewhat shocked to find
7 himself in Hell and facing the same deal that Al
8 Simmons would be faced with hundreds of years later.

9 Q. You have been in the courtroom all morning.
10 There has been some discussion about a character,
11 Medieval Spawn --

12 A. Mm-mm.

13 Q. -- I think appeared in Issue 9?

14 A. Yes.

15 Q. Are you familiar with that character that -- we
16 will call him *Medieval Spawn*.

17 A. I'm aware of that character, yes.

18 Q. Okay. In creating Lord Covenant and Dark Ages
19 Spawn, did you draw on the character *Medieval Spawn*?

20 A. No.

21 Q. In creating Dark Ages Spawn, were you aware of
22 this so-called *convention* that was discussed that
23 there could only be one Spawn every 400 years?

24 A. That, the first time I have heard that, was
25 today. When I started off Spawn, Todd kind of talked

1 me through the rules, the rules of his universe, the
2 rules of his creation. And I read some of the back
3 issues and a lot of them he said, "Forget about this
4 stuff. This is what I want you to concentrate on."

5 He was sort of changing the focus of the book to
6 make it a less superhero oriented and more what he
7 called *urban horror* was the direction he was going
8 with the book.

9 I do believe it's true that there couldn't be two
10 at one time. And once one Hellspawn dies, there is an
11 opening for the next one, and I don't recall anything
12 about a time period in between.

13 Q. In creating Dark Ages Spawn, were you directed by
14 someone to create a Spawn character in a particular
15 time period?

16 A. Well, as I recall, this was a period where, you
17 know -- because Todd had mostly published just the
18 *Spawn* book with the occasional miniseries, like the
19 *Angela* miniseries that was discussed earlier -- he was
20 looking at this point to expand his publishing and
21 create new books. And several ideas were tossed
22 around and one of them was to make a, I guess you
23 would call it, *heroic fantasy* or *historical fantasy*
24 version of *Spawn*.

25 And I'm sure we talked about different periods.

1 The Middle Ages seemed the most appropriate for a
2 character. It's probably the most popular. You know,
3 we were trying to sell comic books. You know, we
4 might have done, you know, Italian Renaissance Spawn,
5 but I don't know if it would have sold very well, so
6 it was something that was a natural fit for the
7 character.

8 Q. You said that another gentleman, Liam --

9 A. Liam Sharp.

10 Q. -- Liam Sharp, drew the character?

11 A. That's correct.

12 Q. Drew all the images for the issues?

13 A. Well, for the issues we worked on together, for
14 the first 14 issues.

15 Q. And tell me a little bit about how a writer and
16 an illustrator interact to come up with how the
17 character should look.

18 A. Well, there is, you know, a lot of discussion.

19 You tend to, or I tend to -- I don't want to

20 generalize -- let the artist have a lot of leeway.

21 You want your artist to be happy. If you are forcing

22 them to draw something they are not having fun

23 drawing, you are not going to end up with a

24 particularly good product.

25 There is obviously certain elements of the

1 original Spawn we wanted to keep -- the spikes, the
2 skull, I guess buckle or belt, whatever you would call
3 it, the chains, some of the markings -- but there was
4 an intention to make it a little more organic. You
5 notice his spikes look more like horn or antler
6 material as opposed to like steel, as they appear on
7 the original Spawn, and the character is overall more
8 feral and animalistic.

9 Q. In creating this sort of historical fantasy
10 series, did you have any prior background or interest
11 in historical fantasy?

12 A. Oh, yeah. I'm a big fan of the fantasy genre and
13 I'm a big history buff, so yeah.

14 Q. What about Liam, did he have any --

15 A. Oh, Liam, you know, that's his bread and butter.
16 He is an Englishman, you know, loves the Celtic
17 mythology and Norseman mythology. And, you know, we
18 talked about artists like Frank Frazetta or Simon
19 Bisley or Don McGregor -- people who are very famous
20 for that style of art. And, you know, that's why, I'm
21 assuming, we settled on Liam, because this was a
22 natural fit for him.

23 Q. I'm going to throw up very quickly a page from
24 Exhibit 1 just for reference. I think we have shown
25 this before. This is actually a black light.

1 A. Mm-mm.

2 Q. You see in the upper left -- well, first of all,
3 do you recognize this character as Medieval Spawn?

4 A. That's the character that we are now referring to
5 as Medieval Spawn. I'm not sure he had a name in that
6 appearance.

7 Q. And in the upper left-hand bubble, he says, "Good
8 day, Sweet Maiden. You are hurt." Do you see that?

9 A. Yes.

10 Q. And have you read the issue that includes
11 Medieval Spawn?

12 A. A long time ago and I have, you know, reread it
13 very recently, yes. We are discussing, you know, this
14 matter.

15 Q. And that character has a distinctive style of
16 speech?

17 A. Sort of courtly, genteel style of speech.

18 Q. In writing the dialogue for *Dark Ages*, were you
19 trying to emulate that style of speech?

20 A. No, not at all.

21 Q. I showed Mr. Gaiman earlier a page from the *Spawn*
22 *Bible* describing Medieval Spawn.

23 A. Mm-mm. Yes.

24 Q. When you were working on *The Dark Ages* series,
25 had you ever seen that page from the *Spawn Bible*?

1 A. The first time I'd seen that page was this
2 weekend. I wasn't even aware it existed.

3 Q. Okay. Lord Covenant, the character that you
4 created, was not a merchant's son?

5 A. No.

6 Q. He was a lord?

7 A. He was a lord. He was a hereditary lord.

8 Q. Okay. And the character you created did not
9 fight in a civil war?

10 MR. ARNTSEN: Just object, leading again.

11 THE COURT: Sustained.

12 BY MR. GRIMSLEY:

13 Q. Did the character that you created fight in an
14 English civil war?

15 A. No. He fought in the Crusades and died in the
16 Crusades.

17 Q. Did the character that you created, Lord
18 Covenant, fight a war in Ireland?

19 A. No.

20 Q. Did Lord -- did the character you created, was he
21 killed in a battle in Ireland?

22 A. No. He was killed in the Holy Land.

23 Q. Where was he killed?

24 A. In the Holy Land, in Jerusalem.

25 Q. Okay. And why did Lord Covenant leave for the

1 Crusades?

2 A. He thought it was his duty to his church and to
3 his God.

4 Q. And did he have any shame that he was trying to
5 escape?

6 A. No, not in particular.

7 Q. Okay. Did the character *Lord Covenant* have an
8 affair with a handmaiden?

9 A. He had an affair with, I believe, his sister's
10 attendant. I don't know if *handmaiden* was the word I
11 used or not. It was a long time ago.

12 Q. When you were writing *Dark Ages Spawn* and
13 creating *Lord Covenant*, was there a backstory that you
14 could draw on from *Medieval Spawn*?

15 A. No. I mean, I will -- you know, it doesn't
16 surprise me that Mr. Gaiman said he had a backstory in
17 mind because as a writer, that's sort of how you work,
18 even if the character is a cab driver and has one line
19 or he was thinking about who their history is, but I
20 was never aware of it.

21 And in the eight pages I saw that where the
22 character appears in Issue 9, there is nothing there
23 to take. If you wanted to take a backstory, if that
24 was the intention, there is nothing to take. The
25 character basically shows up and is almost immediately

1 killed.

2 Q. In the first issue of *Dark Ages Spawn*, which was
3 marked as Exhibit 22, there was a letter that you
4 wrote; do you recall that?

5 A. I wouldn't call it a letter, but there was a sort
6 of introduction. And again, this has been, you know,
7 more than ten years since the book came out and I had
8 completely forgotten about this until I saw it
9 yesterday, that in the back of the comic book there is
10 usually an area where they have letter columns back in
11 the days when people wrote letters and now it's
12 probably an e-mail column.

13 As this was the first issue, there is obviously
14 no fan mail yet. So I was asked, I think by Todd, it
15 might have been by one of the editors, to write a
16 little introduction or a piece about the work and what
17 our thoughts and approaches to it were.

18 Q. Okay. And I put a page up on the screen. I
19 don't know if you can read this or not.

20 A. I can't. I would have to look at the original
21 then.

22 Q. Okay. I will bring you up a black and white
23 copy.

24 A. Okay.

25 Q. Is this the letter that you wrote?

1 A. Again, I'm not sure I would call it a letter, but
2 it's the essay I wrote.

3 Q. Okay. The essay?

4 A. Yeah.

5 Q. And you wrote this in or about February of 1999?

6 A. It sure looks like it, yes.

7 Q. Okay. Above there is a blockened-in quote in the
8 middle?

9 A. Yeah. A pull-quote?

10 Q. Yeah. Then there is a paragraph right beneath
11 that?

12 A. Yes.

13 Q. Can you just read that paragraph to us?

14 A. Yes. "Even casual fans of Spawn will recognize
15 the framework. A flawed but ultimately good man finds
16 himself at the mercy of a devil, who bargains with him
17 for his soul. The mortal agrees to become a
18 Hellspawn, a nascent soldier in the army of Hell, in
19 exchange for a chance to return to earth and perhaps,
20 just maybe, earn his salvation and free himself from
21 the devil's grip."

22 Q. So why are you referencing the framework of Spawn
23 in that paragraph?

24 A. I believe it was to let readers know, if they are
25 Spawn fans, that this is part of the same overall

1 world, the same overall -- the same themes, but at the
2 same time it's a different inflection, a different
3 story, but that if you are a fan of the *Spawn* book, we
4 would like you to be a fan of this new book. And I
5 also wanted sort of to state what, to me, was the
6 interesting theme about the entire *Spawn* Universe.

7 Q. Okay. Do you recall if Liam Sharp also wrote an
8 essay?

9 A. I believe he did, yes.

10 Q. Okay. Before I leave yours, can you read the
11 short paragraph just above the large quote?

12 A. The one that starts with "Because?"

13 Q. Yes.

14 A. Okay. "Because, in the end, this is a book that
15 must (and I believe does) stand on its own. It must
16 not only honor the *Spawn* tradition; it must add to
17 it."

18 Q. So you wrote *Dark Ages* to stand on its own?

19 A. And, as I say, to add to the tradition, the *Spawn*
20 tradition. The idea was you could read just this book
21 and get the whole story. You could read just *Spawn*
22 and get a story. If you read them both, you would get
23 a bigger story, but they were all meant to be
24 self-contained.

25 Q. I'll put up another page, the very next page of

1 the same exhibit.

2 A. Yeah. I believe that's Liam's little essay.

3 Q. Okay. And rather than hobble my way up there,

4 let me see if I can read one of the paragraphs out.

5 It's in this right-hand column and it's the first full
6 paragraph.

7 It begins, "Well, it's probably time to get off
8 my soap box and talk a little about the book in your
9 hands. I hope you can forgive me some liberties in
10 history's telling. In most Arthurian tales, the sixth
11 century knights wear twelfth century armor, and
12 Camelot is never a wooden fort. Our story is likewise
13 being handed down to us from the shadowy guess world
14 of the past, complete with the storyteller's
15 embellishments. I have tried to get a genuine feel
16 for the period and have kept real clear of fairy tale
17 settings, while infusing the piece with, I hope, some
18 sort of contemporary sensibility."

19 Okay. And have you read that before?

20 A. Yes, I have.

21 Q. Okay. The concept in there of avoiding fairy
22 tales sensibilities, is that something you and Liam
23 had discussed?

24 A. Oh, yeah, very much so.

25 MR. ARNTSEN: Object, hearsay.

1 THE COURT: Well, not the fact that they
2 discussed it.

3 MR. GRIMSLEY: Right.

4 THE COURT: You can't talk about what he
5 said, but you can say he discussed it.

6 A. Yes, we did, we definitely discussed that
7 subject.

8 Q. Okay. And in those discussions, what sort of
9 views were you expressing?

10 A. You know, and I'm not someone who is a fan of
11 some fairy tale sensibilities, but that wasn't this
12 book. This book was meant to be dark and gritty and
13 Gothic and, you know, filled with mud and blood and
14 sweat and bone. It was, you know, supposed to be a
15 rough, tough comic book to appeal -- you know, that's
16 sort of Spawn's fan base and we wanted to, you know,
17 extend that sort of appeal.

18 Q. Before today, you were familiar with Neil Gaiman?

19 A. Yes.

20 Q. And you respect his work?

21 A. I'm quite a fan of his work, yes.

22 Q. Were you surprised to hear Mr. Gaiman testify
23 that your work really wasn't original?

24 A. I'm not sure that's what he said. But I think if
25 the assertion is that *Spawn: The Dark Ages* is nothing

1 more than an imitation of eight pages of a character
2 that has no locality, no backstory that's presented,
3 you know, I will take Neil at his word that he had one
4 in mind, but it's not on the page, it's not in that
5 issue. You know, I defy anyone to find it in that
6 issue.

7 It doesn't -- whatever motivations he has aren't
8 clear. And whatever, you know, what we call a
9 *story art*, where a character starts and where they
10 end, it basically has none other than he starts off
11 alive and ends up dead in a very few pages. That, I
12 just don't see how that makes sense.

13 And if, you know, if I were asked, if Todd had
14 asked me, said "Brian, why don't you go develop
15 Medieval Spawn, give him a backstory, let's take this
16 character and develop it into a star," I would have
17 been happy to do it and I would like to think I would
18 have done it well, but that wasn't what I was asked to
19 do and that's not what we did.

20 Q. Okay. I'll put up another image. This is from
21 Exhibit 33. Mr. Gaiman was asked if he recognized
22 this image and he didn't. Do you recognize this
23 character?

24 A. That is also Lord Covenant. I believe that's
25 either a statue or an action figure based off the

1 Issue 1 cover which was done by Liam Sharp and painted
2 by Glen Fabry.

3 Q. So this page from Exhibit 33 and then the toy
4 that you have in front of you as Exhibit 42, do those
5 depictions accurately capture the character that you
6 created in *Dark Ages Spawn*?

7 A. Yes. And this very much, both of them, capture
8 almost down to the lime work of the artist who did it.

9 MR. GRIMSLEY: Tender the witness.

10 THE COURT: Mr. Arntsen.

11 CROSS-EXAMINATION

12 BY MR. ARNTSEN:

13 Q. Mr. Holguin, you indicated that you have written
14 a number of comics for Todd McFarlane?

15 A. Yes.

16 Q. You wrote -- how many of the original *Spawns* did
17 you write?

18 A. Over 80.

19 Q. And in connection with that work, you had access
20 to and were familiar with the entire body of the *Spawn*
21 comics, correct?

22 A. I wouldn't say I was familiar with the entire
23 body.

24 MR. GRIMSLEY: Objection.

25

1 BY MR. ARNTSEN:

2 Q. You had access to the entire body?

3 A. I wouldn't say I had access to the entire body.

4 Q. What would -- in writing your versions of your
5 *Spawn* comic books, what was to prevent you from
6 looking back at other *Spawn* comic books?

7 A. I mean, I don't think anything like physically
8 prevented me other than Todd just saying, "Forget
9 about that stuff. We are going in a new direction.
10 This is what I want to concentrate on."

11 Q. And that's what Todd told you when you were
12 writing the original *Spawn*?

13 A. Yes. When I started, to use the backup, when I
14 started on *Spawn*, at first I was -- can I give you a
15 little background on how comics are created, the
16 process of it?

17 THE COURT: It's up to Mr. Arntsen. He is
18 the examiner right now.

19 BY MR. ARNTSEN:

20 Q. Okay. Go ahead.

21 A. Todd worked with the artist Greg Capullo with
22 what's called the *Marvel method* where Todd and Greg
23 would roughly work out the plot of the story, what
24 happens, the action involved, and then would later
25 write the dialogue. It wasn't written in a full

1 script.

2 When I started on *Spawn*, Todd was still doing the
3 plot and then handing it to me after the art was done
4 and I would write the script. After, I don't know how
5 many, maybe six issues, I took over the overall doing
6 both elements of that story in consultation with Todd.

7 Q. What *Spawn* number did you start writing in?

8 A. 70 or 71.

9 Q. So then after you got to the late 70s, then you
10 were taking --

11 A. Right --

12 Q. -- care of the story then?

13 A. -- definitely by Issue 80 I was. But again, it
14 was all in consultation with Todd.

15 Q. And you wrote *Spawn* 97 to 100, correct --

16 A. Absolutely.

17 Q. -- which featured Angela, correct?

18 A. That's correct.

19 Q. So in connection with that, you had reviewed
20 *Spawn* 9, correct?

21 A. I don't know if I reviewed it specifically in
22 connection with that. But, yeah, I had -- I was aware
23 of that issue at that point.

24 Q. Yeah. And were you aware of *Spawn* 14 and 15?

25 A. I don't think I've ever read 14 and 15.

1 Q. Okay. So as you sit here today, you can't tell
2 me what are in *Spawn* 14 or 15 at all?

3 A. I don't think so.

4 Q. Okay. Did you ever write any stories that had
5 the Violator?

6 A. Yes.

7 Q. And in connection -- and are you aware that the
8 Violator is in *Spawn* 14 and 15?

9 A. I don't believe he is only in 14 or 15.

10 Q. No, but are you aware that he is in there?

11 A. I am now. I wasn't aware of it.

12 Q. Okay. And so in writing comics that are drawing
13 on existing characters, you were comfortable starting
14 over without seeing what had been said before about
15 these characters?

16 A. I wouldn't say "without seeing." I hadn't read
17 all of them. You know, there were 70 issues before I
18 started. I had read probably 25, 30 of them. I had
19 not only seen the HBO animated show, I had actually
20 done some work on it.

21 I can't remember if I -- the movie came out
22 before I had started on the book or very close to
23 about that time and I had long conversations with Todd
24 about who the characters were. But he did want to get
25 away from certain characters like Overkill and Tremor

1 and these sort of comic-booky supervillains and get a
2 lot grittier that had a lot more to do with urban
3 crime, more horror stories, that element, so he didn't
4 want me to fill my head with a style of storytelling
5 that he was trying to get away from.

6 Q. Here, I will show you. We don't need to
7 speculate. I will show you what have been marked
8 Exhibits 2 and 3.

9 A. Mm-mm.

10 MR. ARNTSEN: May I stay up here just for a
11 moment, Your Honor?

12 THE COURT: Sure.

13 BY MR. ARNTSEN:

14 Q. Do you see that on Exhibit 2 is *Spawn* 14 and
15 Exhibit 3 is *Spawn* 15?

16 A. That's -- yes.

17 Q. And the Violator is pictured?

18 A. The Violator is there, yes, and his alter ego the
19 Clown.

20 Q. And have you written stories with the Clown?

21 A. Yes, I have.

22 Q. Do these refresh your recollection as to whether
23 you have seen these before?

24 A. I definitely haven't seen that before.

25 THE COURT: When you say "that," which one?

1 THE WITNESS: I'm sorry. Issue 15, the one
2 that has the Medieval Spawn character on the cover.
3 And I don't believe I have seen this. This looks like
4 a pretty generic kind of pinup of the Violator. There
5 is a lot of images like that, so I can't say for sure
6 I have never seen that, but I don't recall seeing that
7 one.

8 BY MR. ARNTSEN:

9 Q. But again, had you wanted, in connection with
10 you writing a comic about the Violator, there was
11 nothing to stop you from looking back at prior comics
12 that had the Violator, correct?

13 MR. GRIMSLEY: Relevance, Your Honor, as to
14 the character involved and as to the hypothetical.

15 THE COURT: Overruled.

16 A. I'm sorry. The question again?

17 Q. If you were to embark on writing a comic with the
18 Violator, there was nothing to stop you from looking
19 at prior comics that --

20 A. Right.

21 Q. -- used the Violator?

22 A. The most I would have asked Todd were questions
23 like, "Would the Violator do X or Y? Can I make him
24 do this?" you know, as opposed to, "Can you get me
25 Issue 15 and FedEx it to my house so I can read it and

1 then probably still call you with questions?"

2 Q. But again, just to be clear, you had access to
3 the prior *Spawn* comics?

4 A. Yes.

5 MR. GRIMSLEY: Asked and answered.

6 THE COURT: Sustained.

7 BY MR. ARNTSEN:

8 Q. And just following up, are you aware, as you sit
9 here today, that *Spawn* 14 and 15, in addition to
10 featuring the Violator, featured Medieval *Spawn*?

11 MR. GRIMSLEY: Relevance.

12 A. I saw Medieval *Spawn* on that cover, so I had
13 assumed it features him inside.

14 Q. Showing you a page of Exhibit 2, does that show
15 Medieval *Spawn*?

16 A. Yeah. That's the *Spawn* character that everyone
17 is going to call the Medieval *Spawn*, yes.

18 Q. And are you familiar with the unmasked Medieval
19 *Spawn* --

20 A. I'd never seen that before.

21 Q. -- which is in Exhibit 3? Who made the decision
22 to set *Dark Ages Spawn* in the twelfth century?

23 A. The date would have been me. I mean, it was tied
24 to the period of the Crusades. There was a very
25 specific historical event we wanted to tie the

1 character to.

2 Q. You indicated that you consider yourself a
3 creator. Strike that. You testified earlier that you
4 considered yourself a creator of Lord Covenant,
5 correct?

6 A. "A" creator. I wouldn't consider myself a sole
7 creator.

8 Q. No, but a creator --

9 A. Yes.

10 Q. -- along with others? So do you get royalties on
11 the Lord Covenant toys?

12 A. Uh --

13 MR. GRIMSLEY: Relevance, Your Honor.

14 THE COURT: Sustained.

15 BY MR. ARNTSEN:

16 Q. And in one of the initial story lines of *Dark*
17 *Ages Spawn* 1 through 4, there is sort of a battle
18 between Lord Covenant and his -- the person who was
19 his brother-in-law when he was alive, Baron Rivalen,
20 correct?

21 A. I know Baron Rivalen. I haven't seen these books
22 for a decade. I've, you know, had a chance to sort of
23 thumb through them. Baron was definitely an
24 antagonist. I don't really recall if that's his
25 brother-in-law or what their relationship was.

1 Q. Do you know whether Baron Rivalen was very --

2 A. I can't recall that. You know, I'm not
3 disputing. I'm saying I can't remember what their
4 relationship was.

5 Q. It's just whatever it says in the comic?

6 A. Right. Whatever that says is what it was
7 intended to be.

8 Q. Do you recall Lord Covenant's sister, Eloise?

9 A. I recall Rivalen's wife, Eloise. I don't know if
10 I remember if that was Covenant's sister or cousin or
11 what their relationship was.

12 Q. Over the years that you have worked for him, how
13 much has Mr. McFarlane paid you in total?

14 MR. GRIMSLEY: Relevance.

15 MR. ARNTSEN: This goes to bias, Your Honor.

16 THE COURT: Overruled.

17 A. I have no idea. I couldn't guess.

18 Q. Approximately.

19 A. I mean, well into the thousands.

20 Q. Well, how much are you paid per comic?

21 A. It depends on the comic.

22 Q. What's the range?

23 A. Between, you know, three and \$5,000.

24 Q. Okay. And you wrote 70 issues of *Spawn*?

25 A. 80 issues of *Spawn* and probably 50 issues of

1 other things --

2 Q. Okay. So it would be --

3 A. -- maybe more.

4 Q. Okay. So it's at least 130 issues at three to
5 \$5,000 an issue?

6 A. Mm-mm, over, whatever it's been, 12 years.

7 Q. You testified earlier, I believe you said you
8 wrote the first 14 issues of *Spawn Dark Ages*?

9 A. That's correct.

10 Q. I will show you what's been marked as Exhibit 47.
11 Do you recognize this as *Spawn Dark Ages* 8?

12 A. Yes.

13 Q. And you wrote that?

14 A. Yes.

15 Q. And I will just turn you to a page. And this
16 shows Lord Covenant, correct?

17 A. That's correct.

18 Q. And you wrote the dialogue?

19 A. That's correct.

20 Q. Can you just read the dialogue on that page --

21 A. Sure.

22 Q. -- aloud, please?

23 A. Yeah. I'm trying to get my eyes focused. "You
24 say this angel, this seraphic huntress, as you call
25 her, she is out to slay me. Very well then I say yes.

1 I'm glad of it. I am ready for the dark embrace of
2 the grave. This is no life for a man."

3 Q. Okay. Would you describe that as talking
4 medieval?

5 A. No. I mean, if you wanted it to talk medieval,
6 you know, I don't know if you've read the *Canterbury*
7 *Tales* or *Beowulf* when you were in school, but that is
8 medieval English. You know, it might be fun to try
9 and write a comic in that style. I don't think we
10 would sell many copies of it.

11 THE COURT: I don't either.

12 A. And I believe Mr. Gaiman testified that there is
13 no such language as medieval, that medieval is a time
14 period, you know. And to my mind, it's the period of
15 greater Europe, roughly between the fall of Rome and
16 the onset of the Renaissance.

17 Q. Would you characterize that manner of speaking
18 that you just read in that's how people talk now?

19 A. Some people might. It's a little poetic. It's a
20 little, I don't know, you know, it's a little flowery,
21 which is atypical for that character, but it was, you
22 know, a dramatic moment. You know, sort of dramatic
23 monologues are kind of bread and butter in the comic
24 book industry.

25 MR. ARNTSEN: That's all I have got. Thank

1 you.

2 THE COURT: Mr. Grimsley.

3 REDIRECT EXAMINATION

4 BY MR. GRIMSLEY:

5 Q. One follow-up --

6 A. I'm sorry?

7 Q. -- and you really hit on this already, but with
8 respect to the passage that you were asked to read --

9 A. Mm-mm.

10 Q. -- would it be just as easy to characterize it as
11 sort of *hero speak*?

12 A. Yeah, yeah. It's, you know, it's what I call a
13 *dramatic monologue*, you know. There is times you want
14 to get into the character's head by having them, you
15 know, express their feelings. Yeah, it's not
16 necessarily the most realistic. It's probably one of
17 the lesser realistic passages in the whole 14 issues,
18 but, you know, it had a dramatic import for that
19 moment.

20 MR. GRIMSLEY: Thank you.

21 THE COURT: Now you may step down.

22 THE WITNESS: Okay. Shall I take these back
23 to them, give this to you or leave them here?

24 THE COURT: Leave them there. If they want
25 them, they can get them. Mr. Grimsley, do you have

1 any other witnesses?

2 MR. GRIMSLEY: We were going to call
3 Mr. McFarlane.

4 THE COURT: All right. Come forward to be
5 sworn.

6 TODD MCFARLANE, DEFENDANTS' WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. GRIMSLEY:

9 Q. Go ahead and state your full name for the record.

10 A. Todd Dean Mark McFarlane.

11 Q. And you are the creator of *Spawn*?

12 A. Yes.

13 Q. And *Spawn* preexisted any involvement by
14 Mr. Gaiman?

15 A. Oh, yes. There was eight issues before that.

16 Q. Can you give us the basic idea of *Spawn*?

17 A. For me, at its core, its simplist overview, it's
18 a love story. The main concept of *Spawn* is that he
19 literally trades everything at a moment of death to
20 come back to see his wife one last time.

21 I think most of us put in that position would
22 probably do the same thing. I have a wife that I love
23 dearly. The wife in this comic book is called *Wanda*,
24 the name of my wife, so I sort of draw from things in
25 my personal life.

TODD MCFARLANE - DIRECT

1 And then you take that piece of the story --
2 which is, I betrayed everything to come back to my own
3 life -- and you go, fine, sign on the dotted line,
4 which is the deal we make with the devil. And you
5 come back and the world is topsy-turvy and now what do
6 you do? You find out that your wife, the only thing
7 you came back for -- this love, this great love of
8 yours -- she is now remarried, she has had a child.
9 He wasn't able to bear children with her.

10 And now he finds out he has got these fantastic
11 powers -- and I will get into the comic book part of
12 it -- he has these fantastic powers. His identity has
13 been stripped from him. He has no skin. He is not
14 recognizable.

15 And now he goes, "Wow! The one thing I wanted to
16 do was just to get back to my wife. She has got
17 children, which makes her happy. She is married to a
18 good guy, which is my best friend. So of all the guys
19 in the world that I would like to take care of my
20 wife, that would be him. And now I have got all of
21 these sort of crazy powers and forces, no identity,
22 what now?" And it just becomes the beginning of the
23 journey of the hero quest.

24 Q. In these first eight issues of *Spawn*, is there
25 some explanation of the role of a Hellspawn?

1 A. Yeah. I think it's mentioned in numerous issues
2 from 1 to 8.

3 Q. What is the role; what do they do?

4 A. In its simplest form, there is, you know, using
5 biblical terms, there is sort of this big buildup for
6 Armageddon or the Apocalypse, whatever term you want
7 to use, and that both sides, Heaven or Hell, must
8 build up armies. I mean, somebody is going to win the
9 fight, I presume, some day, so both of them are
10 building up their armies.

11 And so what you need is not only do you need
12 soldiers and grunts in those armies, but you also need
13 generals in those armies. And so you build the army
14 of these characters and then you start training some
15 of the officers. And the Spawns that are now on Earth
16 are those sort of officers in training to see if they
17 can cut muster, as you will infer from this, before
18 the big buildup of the battle between Heaven and Hell.

19 Q. Mr. Gaiman testified that the idea that Hell's
20 army is ramping up to battle Heaven, that the opponent
21 was Heaven was his idea. Is that true?

22 A. No, that's not true. As a matter of fact, if you
23 look at the first eight issues, there are a handful of
24 indications of that, of people saying that out loud.

25 MR. ARNTSEN: Object. That misstates

1 Mr. Gaiman's testimony.

2 THE COURT: Sustained.

3 BY MR. GRIMSLEY:

4 Q. I'm going to show you a page from Issue 1 of
5 Spawn, which is marked as Exhibit 36. And there is a
6 logo on that page?

7 A. Correct.

8 Q. Do you recognize that?

9 A. Yeah.

10 Q. And what is that logo?

11 A. It's what we call the *Spawn logo shield* that has
12 been on the inside front cover of I think almost the
13 first hundred-plus issues of *Spawn*. I use it pretty
14 much whenever I'm sort of indicating that *Spawn* has
15 some connection to this, the preexisting *Spawn* from
16 Issue 1. I try to put it in as much as possible just
17 to sort of say *Spawn* was here.

18 It's, in its simplest core -- and let's see if I
19 can explain what it's supposed to be -- it's two
20 things. It's the mark on his mask. It's sort of just
21 a simplified version of the mark on his mask. So this
22 one actually doesn't have the circle around it. Half
23 of them print it without a circle, so there is some
24 do, some don't. But you are going to see that in sort
25 of a lot of different places and it's basically his

1 mask mark.

2 And what it's there for is, if you say, to a lot
3 of people, you can't draw Superman; you can only draw
4 one thing. I think most people, if you put the "S",
5 you go, "Oh, that S in the diamond, that's Superman."

6 If you see the bat with the logo around it, you
7 go, "Oh, that's Batman's logo."

8 There is another guy named *The Flash* which has
9 got an electric bolt with a circle. "Oh, that's
10 the" -- everybody has -- the old-fashioned guys sort
11 of all have their own logo.

12 And I was a fan of comic books for a long time
13 and the history of comic books, so I would go, "If it
14 worked for Superman and Batman, why wouldn't it work
15 for me. So I created my own S, if you will, for this
16 subject.

17 Q. When you were drawing the character that we are
18 now calling *Medieval Spawn* --

19 A. Uh-huh.

20 Q. -- did you use this logo?

21 A. Yeah, the logo shield on the shield, right.

22 Q. And so that derived from a preexisting idea,
23 right?

24 A. Yeah, that's right, it's that. It's just the
25 mark of the mask on the shield, right.

1 Q. Now, Issue 9, which was marked as Exhibit 1, Neil
2 wrote the script?

3 A. Neil wrote the script, you said?

4 Q. Did Neil write the script?

5 A. Yes.

6 Q. Okay. And you illustrated the issue?

7 A. Yes.

8 Q. In Neil's script, did he ever reference the name
9 *Medieval Spawn*?

10 A. No. As a matter of fact, quite contrary. Every
11 time the character that we are now referring to as
12 *Medieval Spawn*, in the script, the actual script, his
13 name is *Spawn*.

14 There is two characters that we are talking about
15 today, the preexisting *Spawn* and the *Medieval Spawn*.
16 The script he gave me, in every single instance,
17 refers to both of them as *Spawn*. He made no
18 distinction between the two of them.

19 Q. Did he later participate in coming up with the
20 name of *Medieval Spawn*?

21 A. No.

22 Q. Neil said that you were excited by the creation
23 of *Medieval Spawn* because you could do a toy. Is that
24 true?

25 A. No, it's not. He either -- I don't want to say

1 lie -- he either misspoke or misunderstood. He is
2 getting his times mixed up. At the time of Issue
3 No. 9, the toy company wasn't even in existence, or if
4 it was, we were a long ways before launching our first
5 toy line, so we weren't there yet.

6 Q. When you drew the character that we are now
7 calling *Medieval Spawn*, did you use certain elements,
8 other than the logo, from the preexisting *Spawn*?

9 A. Yeah. Not some, I used almost every single one
10 of them. So if you want me to go down, I will walk
11 you through it if you want.

12 Q. Sure.

13 A. Okay. So let's just -- *Spawn* has a mask that's
14 got the white marks on it. The *Medieval Spawn*, the
15 character we are calling *Medieval Spawn*, his -- the
16 thing we are calling his *helmet* now, the mark -- the
17 shape of that helmet is this mark right here, the one
18 that we are calling the *shield* right here.

19 The *Spawn*, the original *Spawn*, preexisting *Spawn*,
20 had green eyes; the *Medieval Spawn* has green eyes.

21 The preexisting *Spawn* had a red cloak; *Medieval*
22 *Spawn* had a red cloak.

23 The preexisting *Spawn* had spikes on his arms and
24 legs; the *Medieval Spawn* had spikes on his arms and
25 legs; not exactly the same amount of them, but still

1 spikes nonetheless.

2 The original Spawn had a big mark on his chest,
3 which was an M -- and I won't digress as to what the M
4 means right now -- and the Medieval Spawn has a big M
5 on his chest.

6 The original Spawn has a skull on his belly and
7 the Medieval Spawn has a skull on his belly.

8 The original Spawn has chains; the Medieval Spawn
9 has chains.

10 So essentially, I took the original costume and
11 just gave it a little bit different veneer. It
12 essentially is a Spawn costume. In the script, that's
13 exactly how it's referenced, just make a Spawn
14 costume.

15 Q. Exhibit 37, *Spawn* Issue 8, there was an image in
16 *Spawn* 8. I want to see if you can describe for us
17 this image, if you can make that out.

18 A. Yeah.

19 Q. What are we seeing in that image?

20 A. This is from Issue 8, you said?

21 Q. Yes.

22 A. This is the -- this, Mark wrote and I drew. This
23 is showing, this big thing here, the costume coming
24 alive again, you know. Again, part of the backstory
25 of *Spawn* is that his costume is a living sentinel

1 being.

2 It's not -- I mean, Superman and Batman go and
3 put on uniforms, if you will, but they are always the
4 exact same shape.

5 Spawn's costume is alive, so it actually can sort
6 of morph and change and do different things and it can
7 take different shapes. So this is just another
8 indication here that without having a body in it, the
9 costume is alive, in and of itself, without having
10 anything sort of human in it, if you will.

11 Q. Okay. And even without a body in it, I see there
12 are spikes on the shoulders; is that correct?

13 A. Yeah. Looks like spikes on the shoulders, spikes
14 on the hands, skulls, chains, the mark on the face,
15 the green eyes, the big M on the chest, so all the
16 conventions of preexisting Spawn uniform.

17 Q. Okay. And the white part of the face, that
18 mask --

19 A. Yeah.

20 Q. -- let me show you an image from Issue 9, the
21 Medieval Spawn. This --

22 A. Yeah, I can see it.

23 Q. -- this mask --

24 A. Yeah.

25 Q. -- are those of similar shape?

1 A. Right. And can I just say, you don't have to
2 worry. I mean, I draw this stuff, so I recognize it
3 all, so I don't need as much clarity as anybody else
4 probably. So, yeah, what's similar there, which
5 always go back to the original costume and those two
6 circles, is that he has got the white mark --
7 essentially that shield, that logo shield -- and then
8 the protrudent, which is basically the spikes at the
9 top and then the spikes at the bottom of it. And then
10 it's got the green slits, which is the green eyes, so
11 there is a consistency in all the costumes.

12 Q. Okay. I'm going to bring you a document that was
13 marked as Exhibit 41. And take a moment, flip through
14 the pages. I'm going to ask you first if you
15 recognize that document.

16 A. Yeah. I believe this is a part of a prior filing
17 to some court, possibly this one.

18 Q. Okay. Did you have anything to do with putting
19 this document together?

20 A. Yeah, some of the images, yeah.

21 Q. Okay. Do you recall what the purpose was?

22 A. Yeah. In its simplest form -- and maybe I have a
23 personal bias as an artist -- I think people will
24 understand more visually than to say, "Hey, they both
25 have this, they both have that." The easiest thing is

1 just sort of show people stuff.

2 So I think when we were having a discussion and
3 we had the file -- I deal with lawyers a lot, more
4 than I probably should -- but they sort of write nice
5 big, long dialogue stuff. But I just go, "Why don't
6 we just show them? You are talking about it. Isn't
7 it easier to just sort of show them and walk them
8 through it and to indicate that a lot of the things
9 that they are saying are similar about this character,
10 Medieval Spawn, preexisted? It's all from the
11 original Spawn."

12 And so I just wanted to sort of do a comparison
13 chart, if you will, to go -- they are contending it's
14 coming from Medieval Spawn. But the stuff that's in
15 Medieval Spawn came from the original preexisting
16 Spawn, so I'm just trying to bring it back to the
17 origin of where all of it sort of blossoms.

18 Q. Okay. So I put up the first page of this
19 exhibit.

20 A. Okay.

21 Q. And the illustration on the left-hand side of the
22 page is which character?

23 A. Is the original, preexisting Spawn from Issue 1.

24 Q. Okay. And the character on the right?

25 A. Is I think -- I believe this is the cover for

1 *Dark Ages Spawn* 1, No. 1.

2 Q. And what are the similarities, you know, the
3 aspects of *Dark Ages Spawn* and the original *Spawn*,
4 which you are trying to point out on that comparison?

5 A. Without pointing to everything, I think we listed
6 them up top -- big red capes, claw hands, costume
7 colors, green eyes, M stripe on the chest, neck and
8 skull with chains, skull belt buckles, spikes on the
9 leg boots, spikes on the arm. All those are
10 consistent with the original, preexisting *Spawn*.

11 MR. GRIMSLEY: Your Honor, if it helps, this
12 was Exhibit C to our brief that was filed previously.

13 BY MR. GRIMSLEY:

14 Q. Let's look at the next page.

15 A. In this grouping of paper? Okay.

16 Q. And at the top, which character are we seeing?

17 A. It's a panel from *Dark Ages Spawn*.

18 Q. Okay. And at the bottom?

19 A. The original preexisting *Spawn*. And I think this
20 could bear something just to say, they have both got
21 big, red capes, so that's always been there for the
22 character.

23 Q. Okay. And this page, the next page over, what's
24 being compared there?

25 A. A couple things; one, just sort of showing their

1 gnarly skin, because again, all of the Spawns have had
2 their flesh ripped from them and it's part of the
3 beginning of it. They strip their identity away from
4 them. And just to show on the top panel, the guy has
5 got sort of gnarly skin and sort of claw hand.

6 And then the panel down at the bottom is a panel
7 from Issue No. 1. It's got the gnarly hand of the
8 preexisting original Spawn and the claw hand. And
9 then you can see, even when the uniform takes over the
10 symbia, he still has sort of a claw hand.

11 Q. And then we will turn to the next page of the
12 exhibit.

13 A. Okay.

14 Q. And what are you trying to show with these
15 images?

16 A. All Spawns -- not just from this panel, not
17 just -- every Spawn has green eyes. And I will give
18 you a little bit of backstory in a moment, but -- and
19 then all the panels down below are panels from Issue
20 No. 1, I believe, or at least 1 through 8, but mostly
21 it looks like from Issue No. 1.

22 They all have green eyes. The origin of that
23 idea is that going back to Sunday school teachings,
24 they give you this thing that we are all created in
25 the likeness of our master. Well, in this case, his

1 master isn't God, it's the devil.

2 And when you see Malebolgia -- which is the name
3 of the devil, *Malebolgia* (the M on his chest) --
4 Malebolgia has green eyes. So if you are looking for
5 the connection between, you know, your maker -- "you
6 are going to go meet your maker" -- in this case,
7 Spawn goes, "Oh, my gosh. My maker is not God, it's
8 now Satan," or a variation of the devil.

9 So if look through Issue 1 through 8, every time
10 you see Malebolgia, he has green eyes, too, so it's
11 just an indication of they both come from the same
12 place.

13 Q. The next page in this document?

14 A. The next page is to show, as I had mentioned
15 before, the whole thing is part of the trickeries to
16 strip the identity away from him. It served -- stop
17 me if I digress, please -- it served two purposes.
18 One is this sort of melodramatic of, "You come back.
19 Nobody recognizes you. We are going to strip your
20 identity."

21 The other part was, Al Simmons, in the original
22 comic book, is African American. Historically,
23 African-American superheros, I don't believe, get
24 their fair shake. This is somebody who has lived
25 African American. I think they get the short end of

1 the stick a lot of times.

2 So I set out when I left Marvel to create a
3 character that is African American but get rid of the
4 one thing that we have a tendency to do when we look
5 at people that aren't the same as us, is we just make
6 instant judgment. And the reason we don't like people
7 of color is because of the color of their skin, so
8 just made a solution, strip the skin off it, get away
9 from that.

10 Every time in comic book history they try to do
11 something that is a minority character, they draw
12 attention to it. I wanted to actually be the
13 opposite. I wanted to sort of take that piece and
14 make it go away so that Spawn just became this hero,
15 regardless of whatever his skin color was.

16 So besides my personal philosophical input, the
17 other part is just, "You want to go see your wife?
18 Ha-ha-ha! I'm the devil. I'm going to trick you.
19 I'm going to strip your skin off you. And even if you
20 go see her, she is never going to recognize you."

21 Q. And the next page of this exhibit?

22 A. The next page is one of the things that the
23 original Spawn finds out early on in the Issues 1
24 through 8 is he is not human. He is actually not even
25 made out of flesh and blood.

1 Those green eyes, if you think about it as a
2 pumpkin, it's sort of like the glow of a pumpkin, so
3 he actually doesn't even have eyes. If you went and
4 put your finger where it was, it would actually go in
5 like a pumpkin where you carve out the eye.

6 So this is sort of a moment where he sort of
7 finds out "I'm made out of something else," because
8 now where his heart should be in the inside of him,
9 instead of blood pouring out, he has got this green
10 stuff that we refer to as *necroplasm*.

11 And then this panel up top is just, you know, the
12 Dark Ages Spawn gets injured. He has a hole in him
13 and it has the green necroplasm gooing out of him.
14 That's what happens when you sort of shoot them. They
15 don't really die, per se.

16 Q. So you are showing the character -- this is one
17 of the characteristics?

18 A. Yeah, taking one of the obvious mechanisms of the
19 original Spawn.

20 Q. And in this comparison, what is this showing that
21 is similar between the characters?

22 A. One of the other things, and this probably isn't
23 as good of a representation as I could grab with some
24 other stuff, but again, the whole M sequence. Their
25 mask, there is Malebolgia, this devil character. And

1 so all the costumes have the mark of the beast, if you
2 will, which is, you know, the big giant M.

3 So whenever you look and they happen to have
4 their costumes on, you are going to see the M a lot of
5 times. I'm sure, when it's the regular Spawn. But in
6 most of the variations that I have done in the comics
7 and toys, they have some type of M mark on them, for
8 the most part.

9 Q. And this comparison was the next page.

10 A. That's just the original Spawn. He has got a
11 cloak, like I said, big red cape, but he also is tied
12 down by skulls a lot of times, so the skulls in the
13 motif. I mean, the whole skull and spike stuff is
14 just cool stuff. I mean, I hate to sort of be overly
15 simple, but a lot of stuff that I create, it has to
16 fall into a cool factor for me.

17 And when I was creating this character, kids sort
18 of like dark and skulls -- you see them on T-shirts --
19 and spikes, make him look like a dude. But anyways,
20 the cloak is attached by two skulls and chains, both
21 the Dark Ages Spawn and the original Spawn.

22 Q. Okay. And then the next page just shows the
23 skull belt buckle on both characters?

24 A. Skull, yeah, and that the chains come off him,
25 for the most part, you know -- sometimes they are,

1 sometimes they are not -- because everything is
2 living, even the chains. I mean, in my mind, tongues
3 and arms and hands, they just are components of a
4 costume.

5 Q. And the next page shows that they both have
6 spikes on their leg boot; is that correct?

7 A. Yeah. Yes. Spikes is a big part of the Spawn
8 character. He has them on his hands and his arms and
9 his legs.

10 Q. And all of the characteristics that are similar
11 between the original Spawn and Dark Ages Spawn that
12 you set forth on Exhibit 41, did all of those elements
13 precede the creation of Medieval Spawn?

14 A. Yes.

15 Q. Todd, there is a group of toys up there in front
16 of you.

17 A. Okay.

18 Q. Let's start with the one that's closest to you
19 that's titled "Lord Covenant."

20 A. Okay.

21 Q. Do you recognize that toy?

22 A. Yes.

23 Q. Okay. And which comic book series is that
24 associated with?

25 A. *The Dark Ages Spawn.*

1 Q. Okay. And that's the main character in *The Dark*
2 *Ages Spawn*?

3 A. Yes, Lord Covenant.

4 Q. Okay. Then over just beyond your water pitcher
5 there are two other toys, if you can reach those.

6 A. Both of them?

7 Q. Yes.

8 A. Okay.

9 Q. And what are those two toys?

10 A. One is the original Spawn and the other one is
11 the one called *Medieval Spawn*.

12 Q. Okay. And is there a number on the back of
13 *Medieval Spawn*, just for identification?

14 A. An exhibit number? 43.

15 Q. Okay. So 43 is a *Medieval Spawn*?

16 A. Yes.

17 Q. And was that *Medieval Spawn* toy fairly popular?

18 A. The Spawn line, as a whole, was popular. I think
19 we did six of them. There is a picture of all the
20 characters we did on the back. I think they all did
21 good, but people liked the Spawn characters.

22 Q. Was the idea of creating *Dark Ages Spawn* to draw
23 on the popularity of the *Medieval Spawn* character?

24 A. No. It was to draw on the popularity of Spawn.
25 Everything goes back to the origin of Spawn. It's all

1 about Spawn.

2 Q. I'm going to put up what's been marked as Exhibit
3 39. I'm going to put up one page at a time. I'll put
4 the first page and just ask generally if you recognize
5 the first page of Exhibit 39.

6 A. That's a cover to the catalogue called *Previews*.
7 I think it's been mentioned before. This is this big,
8 thick book that they solicit all the comic book items
9 in the comic book industry.

10 Q. And do you recognize the character that is on the
11 cover of this issue?

12 A. Yeah. I think that's the image of *Dark Ages*, the
13 *Spawn: Dark Ages* cover to Issue No. 1.

14 Q. Okay. Then the last page of the exhibit is here.

15 A. Okay.

16 Q. There is some text on the right-hand side of the
17 page.

18 A. Correct.

19 Q. There was some discussion earlier about a
20 solicitation.

21 A. Right.

22 Q. Is that what this refers to?

23 A. Yes.

24 Q. Okay. So this is the solicitation for *Spawn: The*
25 *Dark Ages*?

1 A. Right. And again, I don't know if they made it
2 clear. This is sort of generally how -- and you are
3 going to see this when you look through this book --
4 you sort of give an image or images -- it may or may
5 not be the cover, but just some artwork -- and then a
6 little synopsis, the price, when it's coming out.

7 And then the dealers either read this book or
8 they don't and then they make the choices whether they
9 read the book or they don't, so you try to give them
10 helpful tools. Whether they use it, you don't get to
11 control that.

12 Q. Is that the main way that you market comic book
13 issues to retailers?

14 A. That's correct.

15 Q. In marketing *The Dark Ages* series to the
16 retailers, was any reference ever made to Medieval
17 Spawn?

18 A. No.

19 Q. If you had wanted to draw on the popularity of
20 Medieval Spawn in marketing *Dark Ages*, would you have
21 done anything differently?

22 A. The obvious thing, we would have actually
23 mentioned it. Let's just sort of be fairly obvious
24 here. We are all skilled -- Neil, myself, Brian --
25 all of us. We are all skilled. If we want something

1 to look like something, we can do it. That's why
2 there are 600 issues of *Superman*. We can make stuff
3 look like other stuff and give it some kind of
4 consistency.

5 And then from a marketing point of view, and I
6 own -- you know, my companies have grown since Neil
7 and I first met each other when I was working over a
8 garage, so again, most of Neil and my interaction was
9 when I was working over a garage with a couple of
10 people working with me.

11 As the years have gone by and I have gotten
12 better at marketing, of course you draw attention to
13 the things that are going to bring you value, the
14 things that are going to get you the extra sales, the
15 things that are going to get you attention. And the
16 things that you will find, for the most part,
17 everything that I did, it all goes back to Spawn. The
18 value is Spawn.

19 So the mention that anything is in there, I
20 couldn't read it, but I'm betting it says something
21 about going back to the Spawn intros or Spawn himself
22 or something. You are going back to the "A" guy. You
23 don't start dealing with the guys that are below the
24 "A" guy.

25 Q. There was some discussion earlier about Exhibits

1 2 and 3, which are Issues 14 and 15.

2 A. Okay.

3 Q. Do you recall those issues generally?

4 A. Yeah.

5 Q. Okay. And those issues utilized the, what we are
6 now calling, the *Medieval Spawn* character?

7 A. Yeah, I think portions of it.

8 Q. Okay. And in 14 and 15, the character is drawn
9 in the style as he appears in Issue 9?

10 A. I presume so, yeah.

11 Q. Okay. I can bring it up to you if you want to
12 flip through it.

13 A. No. I will take your word for it. I don't see
14 where we got crazy on the uniform.

15 Q. And in Issues 14 and 15, did you try to mimic the
16 style of speech from Issue 9?

17 A. Of the *Medieval Spawn*?

18 Q. The *Medieval Spawn* character.

19 A. Yeah. Yep.

20 Q. You don't dispute that the character that appears
21 in Issues 14 and 15 is the same as the character who
22 appeared in Issue 9 --

23 A. No.

24 Q. -- the *Medieval Spawn* character?

25 A. No, I don't dispute that.

1 Q. Okay. And if you had intended to continue that
2 in Dark Ages Spawn, you would have continued that same
3 look?

4 A. Right. Like I say, we all like to think of
5 ourselves to be fairly talented. If the intent was
6 for me to do a Medieval Spawn comic book, a couple
7 things would have happened:

8 It would have been called *Medieval Spawn*, sort of
9 easy stuff;

10 It would have looked like Medieval Spawn; and

11 We would have just sort of led to any components,
12 of which there weren't a lot, from Issues 9 and 14 and
13 50 to go.

14 That wasn't the intent. It's not because we were
15 trying to be devious, because there is a more obvious
16 answer, because we weren't trying to do that. And so
17 Issue 14 and 15 was me replicating something that I
18 had seen before, which is Issue 9.

19 Dark Ages Spawn wasn't replicating that because
20 we could have made it look like that. Liam Sharp is a
21 tremendously skilled artist. He could have made it
22 look like, quote/unquote, Medieval Spawn; he didn't.
23 We came up with another character with another look
24 based on the components and the mechanisms of the
25 original preexisting Spawn and all the backstories on

1 him.

2 Q. Issue 9, which was marked as Exhibit No. 1, also
3 introduced a character, Angela, correct?

4 A. That's correct.

5 Q. I will just bring this to you so you can refer to
6 it if you wish. And you drew the images of the
7 character *Angela*?

8 A. Yes, I did --

9 Q. Okay.

10 A. -- in this issue.

11 Q. In this issue.

12 A. Yes.

13 Q. Okay. Were there elements of Angela that you
14 took from the original -- the preexisting Spawn
15 character himself?

16 A. Yes, I did.

17 Q. And what elements were those?

18 A. Well, let's just look at it, a couple of dynamics
19 of drawing. The biggest, as an artist -- and again, I
20 know we have got a couple writers, so let me do a
21 little art here -- what we do as an artist, we have a
22 flat piece of paper, it's two dimensional. Our trick
23 is create depth and illusion in 3-D.

24 So the things you can use in drawing are things
25 like cape in the wind and hair and all these other

1 components. I can make something look pretty
2 dramatic, even though they are just saying "pass the
3 coffee," as long as I have got the right components
4 that are there.

5 So for Spawn, he has got his chains are going.
6 He's got his cowls going around. He's got chains that
7 are going. He's got magic spells that are going
8 there, so we start using those. So let's just look at
9 some of the direct stuff and then I will get into some
10 of the stuff that's a little more ambiguous than that.

11 The mark on her face is a direct replication of
12 Spawn's mark on his face. The only difference is it's
13 black. Now, why is it black? Easy conventions here.
14 Let's just go to cowboys and Indians and some of the
15 other conventions in the world. The good guy wears
16 the white hat, the bad guy wears the black hat, and we
17 just have these sort of stereotypes throughout sort of
18 literary hero verses bad guy.

19 So it's not sort of a stretch to say whatever the
20 mark is for the Hell guy, the angels got the opposite,
21 because we are taught they are the opposite in
22 everything we do here. So she has blank eyes; oh,
23 Spawn has blank eyes. They are not green because that
24 would mean that she is part of the devil's green eyes.
25 She is not a devil warrior; she's a Heaven warrior.

1 The mark, if you look at it, it's got the points
2 coming down the cheek. And if you took the headdress
3 off, it comes up in here. It's the opposite to say
4 "I'm the opposite of you." All you got to do is see
5 me from the neck up, bald even, and you are going to
6 know which of us is a good guy and which one of us is
7 a bad guy within the confines of it.

8 She's also got the earrings. The earrings have
9 the Spawn mark on the earrings there. And then as we
10 start getting into some of the sort of broader
11 conventions, he has got sharp imagery on him, which is
12 the spikes. So you see she's got the stuff on her
13 shoulder that's sort of sharp. Even the wings on the
14 helmet are a little sharp.

15 But again, let's just go to the sort of easy
16 conventions of angels. When somebody says to you,
17 "Oh, an angel," we think wings. It's kind of
18 difficult to fight with big, giant wings on your back.
19 At least with a cape I can make it move around and get
20 out of the way. Wings are sort of locked on. We all
21 know how birds work.

22 So I go, how do I kind of get wings, angel's
23 wings, on her? Okay. I will put it on a headdress.
24 Why? Because again, there is a whole history of
25 things called *Valkyries* that are there that again,

1 they are sort of warrior *Vikingesque* sort of girls and
2 they have sort of big headdresses with wings on. It
3 kind of looks cool. And then Spawn has his chains and
4 the chains sort of dance around, again trying to
5 create the illusion of 3-D.

6 So besides giving her a spear -- Neil said he was
7 surprised I gave her a spear -- because it seems like
8 if you are going to fight each other in war, both
9 sides should have some kind of weaponry; that I didn't
10 want to get her bunkered down with chains, I give her
11 this more elegant look, which is the ribbon, so that
12 again they could sort of dance around on her and have
13 a good thing. So, I mean, I don't know how much
14 further you want to do this. Even her hair being long
15 and flowing sort of can add to the look of 3-D.

16 Q. Why so scantily clad?

17 A. A couple obvious reasons. You are going to see a
18 lot of that in the history of women characters when
19 men are at the helm. We usually don't get too
20 conservative with them. I mean, there is a long
21 history of fantasy art that has them -- you know, two
22 of the most famous ones, Frank Frazetta and Boris.

23 I mean, all the ladies are -- and if you look at
24 Conan and things like that, we just like to add sex.
25 I wouldn't call it *scantily clad*. I would go -- we

1 like them to be sexy, so we like to show sort of skin.
2 And if we don't show skin, I have to tell you, we put
3 skin-tight uniforms on them, for the most part.

4 So Catwoman having tight leather is no mistake
5 and isn't any less sexy because she is covered from
6 head to toe, given its body-type uniform. So it's
7 just a standard mechanism that boys have been doing, I
8 assume, since the invention of boys.

9 Q. Okay. Exhibit 8, Issue 44 of *Spawn*, do you
10 recognize that issue?

11 A. Yeah. It's a *Spawn* issue, No. 44.

12 Q. Okay. And this issue introduces a character
13 called *Tiffany*?

14 A. Correct.

15 Q. Now, did you draw the character *Tiffany*?

16 A. In this issue?

17 Q. Yeah.

18 A. No.

19 Q. When you look at the images of *Tiffany* -- I can
20 put one up on the screen.

21 A. Mm-mm. I wrote this issue though.

22 Q. Okay. So let me put *Tiffany* up. We have *Angela*
23 there as well. I don't know if I can get them both on
24 the same screen or not. Now, both *Tiffany* and *Angela*
25 have the same markings around the eye?

1 A. Yeah, the negative Spawn marking, right, and the
2 wide eye.

3 Q. Okay. And those are features that come from the
4 preexisting Spawn character?

5 A. Yeah, the marks on the face and the hollow eyes.

6 Q. Okay. And Angela has the spear, but Tiffany has
7 a gun?

8 A. Yeah. I think you show it up there, yeah. I
9 think she is using a hand-held weapon.

10 Q. And you are an artist. Is the hair the same on
11 the two characters?

12 A. No.

13 Q. Okay. They are both wearing a bikini-type
14 outfit, correct?

15 A. Yeah. I mean, again, the word has been suggested
16 *scantly* or *sexy*. They are both *sexy*, yeah.

17 Q. Okay. Tiffany was also described in something
18 called the *Spawn Bible* --

19 A. Okay.

20 Q. -- do you recall that? Did you happen write any
21 of that description of Tiffany?

22 A. I don't believe so.

23 Q. You said Angela, you put wings in her headdress?

24 A. Yeah.

25 Q. All right. So she has a headpiece that has wings

1 on it?

2 A. Right.

3 Q. How did you incorporate wings into the Tiffany
4 character?

5 A. Again, trying to incorporate sort of the obvious
6 choices. When you say "angel," the typical way to
7 give angels wings is just put them on the back and
8 make a lot of feathers. So for her, given that you
9 wanted to make something that's a little sharper and
10 more dangerous and a lot cooler looking is she has
11 got -- they are steel miniwings with sharp blades on
12 them. They are almost like throwing ninja darts, if
13 you will, on her back. I guess if you did a
14 silhouette of her, it would sort of look like wings on
15 the back of her.

16 Q. There was a suggestion that one of the toys of
17 Angela actually had wings on her back. Is that just
18 someone missed not being able to see the image
19 properly?

20 A. Yeah. Angela never had wings on her, on her
21 back, never had wings on her back.

22 Q. To the extent Angela has wings, they are always
23 part of her headpiece?

24 A. I believe so.

25 Q. Sometimes the hair may be so voluminous that it

1 somewhat obscures the fact there is a headpiece there?

2 MR. ARNTSEN: Just object on leading --

3 THE COURT: Sustained.

4 MR. ARNTSEN: -- and let it go for a while.

5 MR. GRIMSLEY: That's fine.

6 BY MR. GRIMSLEY:

7 Q. Did you ever draw -- did you draw the character
8 *Domina*?

9 A. I don't believe so.

10 Q. Okay. Do you recall anything about the
11 personality of *Domina*?

12 A. Just an angel out there trying to get the bad
13 guys or the good guys, depending on what your
14 perspective was of who was the hero in the book.

15 Q. Let's go back to *Dark Ages Spawn* for just a
16 moment.

17 A. Okay.

18 Q. Did you ask your team to develop any series based
19 on the character *Medieval Spawn*?

20 A. Yeah. I was expanding the *Spawn Universe*, so I
21 wanted to put some more comic books out.

22 Q. Okay. And you asked them to develop a series
23 based on *Medieval Spawn*?

24 A. No. On *Medieval Spawn*? No.

25 Q. Okay. Did you direct your team to develop a new

1 series based on a particular time period?

2 A. You know, my guess is, I probably left it up to
3 them --

4 Q. Okay.

5 A. -- you know, come up with something cool.

6 Q. Okay. You don't recall -- do you recall
7 directing them to develop something based on a
8 medieval time period?

9 A. Not specifically, no.

10 MR. GRIMSLEY: Okay. I have nothing further
11 at the moment.

12 THE COURT: Mr. Arntsen.

13 CROSS-EXAMINATION

14 BY MR. ARNTSEN:

15 Q. Mr. McFarlane, you and Neil Gaiman cocreated both
16 Angela and Medieval Spawn in *Spawn* Issue 9, right?

17 A. Yes, sir.

18 Q. And Angela was the first warrior angel, bounty
19 hunter in the *Spawn* Universe?

20 A. Right.

21 Q. There weren't any angels before *Spawn* 9, right?

22 A. There was a robotic angel in Issue 8, but not a
23 bounty hunter, as you describe it.

24 Q. And in addition to -- in addition to *Spawn* Issue
25 9, Mr. Gaiman also wrote a little Angela story in

1 Spawn Issue 26, correct, or a little Angela-related
2 story?

3 A. Yeah, I think he wrote a few pages in that issue,
4 correct.

5 Q. I will just show you what's been marked Exhibit
6 4. That's Spawn 26, right --

7 A. Yes, sir.

8 Q. -- a couple of pages with Gabrielle and Spawn.

9 A. Yeah. Looks like two, maybe three pages, yep.

10 Q. And Neil wrote the *Angela* 1, 2 and 3 comics,
11 correct?

12 A. Correct.

13 Q. And at least before she died, Angela was a major
14 player in the Spawn Universe, correct?

15 A. She was one of the characters, one of the
16 supporting cast.

17 Q. Was she a major player in the Spawn Universe?

18 A. You could give that definition, yes.

19 Q. What?

20 A. You could give that definition, yes.

21 Q. And in fact, you referred to her as such,
22 correct?

23 A. Okay.

24 Q. Do you have any questions about that?

25 A. No.

1 Q. You agree that you referred to her as a major
2 player in your comic books?

3 A. No. I -- if I said it, then I will stand by it,
4 yep.

5 Q. Let's see Exhibit 7. You recognize that as *Spawn*
6 39?

7 A. Yes, sir. Do you want me to read that?

8 Q. This is, you answered a letter, correct?

9 A. Can I look at that for a moment?

10 Q. Sure, sure.

11 A. Yes.

12 Q. And can you just read the first sentence there?

13 A. "Stephanie" -- which is the name of the person
14 who wrote the letter -- "Stephanie, Angela is a major
15 player in my comic books, so you will always be seeing
16 her on a semi-regular basis. I don't know if I will
17 do a book of her, but it's possible, things change."

18 Q. That's fine. Thank you. And you don't dispute
19 that you and Neil cocreated Medieval Spawn, correct?

20 MR. GRIMSLEY: Asked and answered.

21 THE COURT: Overruled.

22 A. What was the question? I'm sorry.

23 Q. You don't dispute that you and Neil cocreated
24 Medieval Spawn, correct?

25 A. The character from Issue 9, no, I do not.

1 Q. Well, and also, there was a comic called *Dark*
2 *Ages Medieval Spawn*, correct?

3 MR. GRIMSLEY: Object, misstates the
4 document.

5 A. No, I've never had that.

6 Q. Let me show you what's been marked Exhibit 28.

7 A. Okay.

8 Q. It says, "Todd Toys Presents: 'Dark Ages'
9 *medieval Spawn*," correct?

10 A. Let's just get some clarity here. The title of
11 that book is called *Spawn* --

12 Q. Right.

13 A. -- and the character is called *medieval Spawn*.

14 Q. And it says, "Todd Toys Presents: 'Dark Ages'?"

15 A. Right, right. It's a title on the inside, right.

16 Q. And "Medieval Spawn created by: Todd Mcfarlane &
17 Neil Gaiman," correct?

18 A. Correct.

19 Q. And that was 800 years ago, right?

20 A. Correct.

21 Q. And you are familiar with the concept of
22 *derivative characters*, aren't you?

23 A. In a general sense. Again, I'm not a lawyer
24 either, so --

25 Q. But, for instance, *Medieval Spawn* is a derivative

1 character of Spawn, correct?

2 MR. GRIMSLEY: Calls for a legal conclusion.

3 MR. ARNTSEN: I think it's been found.

4 That's fine.

5 THE COURT: Oh, I'm sorry. The objection is
6 sustained.

7 MR. GRIMSLEY: Thank you.

8 BY MR. ARNTSEN:

9 Q. And you equate the Dark Ages with medieval time,
10 correct?

11 A. I have never thought about the connection between
12 the two.

13 Q. First of all, in Exhibit 28 that we were just
14 talking about --

15 A. Yep.

16 Q. -- it says, "'Dark Ages' medieval Spawn,"
17 correct?

18 A. On the inside front cover?

19 Q. Yes.

20 MR. GRIMSLEY: Asked and answered.

21 THE COURT: Sustained.

22 MR. ARNTSEN: Your Honor, it was impeachment
23 from his saying he didn't connect the two. That was
24 the purpose.

25 THE COURT: But he had already said earlier

1 that he connected the two in that issue.

2 MR. GRIMSLEY: And he did not establish
3 the -- it's sustained.

4 BY MR. ARNTSEN:

5 Q. Showing you what's been marked Exhibit 21, can
6 you identify that?

7 A. It looks like it's Issue 22 of another series
8 called *Curse of the Spawn*. It is a separate comic
9 book series.

10 Q. Another one of your *Spawn* series?

11 A. Another *Spawn* series, that's right.

12 MR. GRIMSLEY: I'm sorry. Which exhibit are
13 we looking at?

14 MR. ARNTSEN: 21.

15 MR. GRIMSLEY: Thank you.

16 BY MR. ARNTSEN:

17 Q. And you see there is what's called an *End Cap*?

18 A. Correct.

19 Q. What are the End Caps, generally?

20 A. I think in some of the comic books, the End Caps
21 were advertisements from the toy company that put some
22 of the toys in there, that put pictures and
23 descriptions.

24 Q. When you say "the toy company," that's your toy
25 company, correct?

1 A. Yeah. It's a separate company from the comic
2 book company, yeah.

3 Q. And this here talks about "The Dark Ages Come To
4 Light," correct?

5 A. I haven't seen this, so let me read it. Do you
6 want me to read that or --

7 Q. No. That End Cap refers to "The Dark Ages,"
8 correct?

9 A. That sentence right there?

10 Q. Yeah.

11 A. Yeah. I mean, I didn't write that stuff.

12 Q. And then the following paragraph, it talks about
13 "Spawn Series 11 has an emphasis on this medieval
14 time," correct?

15 A. Let me see it.

16 MR. GRIMSLEY: Relevance, Your Honor, to this
17 continuing line of questioning, since he has already
18 testified he didn't write this thing that he is being
19 questioned about.

20 THE COURT: Why would it be relevant if he
21 didn't write it?

22 MR. ARNTSEN: Because it's his comic company.
23 I can ask.

24 BY MR. ARNTSEN:

25 Q. It's your toy company, correct?

1 A. The toy company that put these toys out?

2 Q. Yeah.

3 A. Yes, sir.

4 MR. GRIMSLEY: Which is not a party here
5 today.

6 THE COURT: Well, what's your relationship
7 with the toy company?

8 THE WITNESS: I own it.

9 THE COURT: I will overrule the objection.

10 THE WITNESS: Okay. Is there a question?

11 BY MR. ARNTSEN:

12 Q. It's really fairly straightforward --

13 A. Okay.

14 Q. -- the title refers to "The Dark Ages," correct?

15 A. "The Dark Ages Come To Light," yeah.

16 Q. And then the first paragraph refers again to "the
17 Dark Ages," correct?

18 A. Yes, sir.

19 Q. And then the second paragraph refers to "this
20 medieval time," correct, the first sentence of the
21 second paragraph?

22 A. Yes, sir.

23 Q. And part of the Spawn myth was that a Hellspawn
24 occurred every 400 years, correct?

25 A. There may have been a time when that was true.

1 Q. Was there a time when that was true?

2 A. It's possible, yes.

3 MR. ARNTSEN: Excuse me a second. Exhibit
4 20.

5 BY MR. ARNTSEN:

6 Q. Showing you what's been marked Exhibit 20, can
7 you identify what that is?

8 A. Yeah. It's Issue No. 4 of another comic series
9 called *Curse of the Spawn*.

10 Q. And then you see there is a section in the back
11 called *Curse Words*?

12 A. That's the title of the letter page, correct.

13 Q. And I'm showing your attention here, do you see
14 where it says there, "A new Spawn appears on earth
15 every 400 years?"

16 A. Could I take time to read this?

17 Q. Yes. Yes, you may.

18 A. Okay.

19 Q. Mr. McFarlane, did I read that correctly?

20 A. It looks like it's an answer from Alan Moore.

21 Q. It was a letter to you, correct?

22 A. To *Curse Words*, right. "Dear Alan" -- the letter
23 is to Allen Moore -- it says, "Dear Alan."

24 Q. Right. And then it says, "Since this is
25 addressed to Alan and I feel he can answer your

1 questions better than I can." This is you answering
2 that, correct?

3 A. Right. Somebody wrote a letter to Alan and so I
4 said, you are writing a letter to Alan. I think Alan
5 can answer it better than I can.

6 Q. Right. And the answer is, "A new Spawn appears
7 on the earth every 400 years," correct?

8 A. Right, and that was Alan's answer, correct.

9 Q. All right. Thank you.

10 THE COURT: I think we will take a 15-minute
11 recess at this point.

12 MR. ARNTSEN: That's fine, Your Honor.

13 THE COURT: Are you calling any other
14 witnesses besides Mr. McFarlane?

15 MR. GRIMSLEY: No, Your Honor, we are not.

16 THE COURT: Okay. All right. We will recess
17 for 15 minutes.

18 (Recess at 2:41 p.m. until 2:55 p.m.)

19 THE COURT: Mr. Arntsen.

20 BY MR. ARNTSEN:

21 Q. Mr. McFarlane, the Spawn Universe is an important
22 thing to you, correct?

23 A. Spawn mythology, the original Spawn mythology,
24 right.

25 Q. And you were here when Mr. Holguin testified

1 earlier in connection with you talking with him, in
2 terms of the *Spawn Dark Ages* series, just to make sure
3 how it fit into the mythology, correct?

4 A. Correct.

5 Q. And so in addition to the original *Spawn* series,
6 there was, for instance, *Spawn Dark Ages*, which was
7 set 800 years ago, right?

8 A. I don't know if they established that. I don't
9 recall.

10 Q. It was set -- it was set in the past?

11 A. In the past; yes, sir.

12 Q. And as you testified here today, you are now
13 willing to acknowledge that it was set 800 years ago?

14 A. I can --

15 MR. GRIMSLEY: Asked and answered.

16 THE WITNESS: Whoops.

17 MR. GRIMSLEY: Asked and answered. I'm
18 sorry.

19 THE COURT: Sustained.

20 BY MR. ARNTSEN:

21 Q. And then another comic series is *Curse of the*
22 *Spawn*, correct?

23 A. Yes, sir.

24 Q. And that's set in the future, right?

25 A. I don't think so.

1 Q. I'm showing you what again has been marked
2 Exhibit 20. And we were referring you to a letter and
3 then you referred that letter to Alan McElroy, who was
4 the writer, correct?

5 A. Right. I think I may have misspoke. I think I
6 might have said Alan Moore.

7 Q. Right. You meant Alan McElroy, correct?

8 A. Yes, sir.

9 Q. And again, what he says, the passage -- first of
10 all, the protagonist of the *Curse of the Spawn* is
11 named *Daniel Llanso*, correct?

12 A. Can I read them?

13 Q. You may.

14 A. In this particular issue.

15 Q. Daniel Llanso is the Spawn, correct?

16 A. In that particular issue. I don't mean to
17 correct you here, but *Curse of the Spawn* I think was a
18 variation of a bunch of different stories throughout
19 the run. It wasn't one set of characters; it was a
20 different episode, if you will.

21 Q. But *Curse of the Spawn* 4 involved a Spawn named
22 *Daniel Llanso*, correct?

23 A. That's what it looks like; yes, sir.

24 Q. And then in the letter we referred to here with
25 Mr. McElroy, who is the writer, he says, "A new Spawn

1 appears on earth every 400 years and Daniel Llanso is
2 the Spawn that shows up 400 years after Al Simmons,"
3 correct?

4 A. That's what we wrote. We weren't terribly
5 consistent with it and it wasn't a rule.

6 Q. But here, when he is talking about Al Simmons, he
7 says his story happened 400 years in the past,
8 correct?

9 A. Right, but we weren't consistent with that and it
10 wasn't a rule.

11 Q. Mr. McFarlane, I will show you what's been marked
12 Exhibit 26. And do you recognize this as Volume 15 of
13 *Spawn Dark Ages*?

14 A. Yes, sir.

15 Q. Turning to a page here, it says, "It was a 400
16 year gamble laid down by players who had no intention
17 of losing." Do you know what that's referring to?

18 A. No. I didn't write that issue.

19 Q. Isn't that referring to the fact that Hellspawn
20 can only appear once every 400 years?

21 A. I didn't write the issue. It's possible. What
22 issue was that?

23 Q. 15.

24 A. 15. Okay. Who -- I guess I don't get to ask
25 questions.

1 MR. ARNTSEN: No further questions.

2 THE COURT: Mr. Grimsley, anything else?

3 MR. GRIMSLEY: Just a few follow-ups.

4 REDIRECT EXAMINATION

5 BY MR. GRIMSLEY:

6 Q. Todd, how familiar are you with the stories in
7 *The Dark Ages* series?

8 A. Not very familiar.

9 Q. Were there stray comments made throughout the
10 time that there was one Spawn every 400 years?

11 A. I don't know what every writer wrote. But
12 whatever they wrote, they weren't consistent with it.
13 There are plenty of examples to blow that rule,
14 whatever he wants to call it, out of the water.

15 Q. Why would you not be consistent with that 400
16 years?

17 A. For two reasons: Number one, there is multiple
18 people working on all these different books and we
19 don't sort of all cross-reference everything and read
20 everybody's stuff. So along the process of just
21 making comic books, things happen. I mean, it was
22 mentioned earlier that I couldn't even keep track of
23 how many spikes I had on the guy's arm and I was doing
24 the costume, so there is an inconsistency just in the
25 process itself.

1 And the other one that, you know, sort of applies
2 here on another level is just marketing. As *Spawn*
3 became one issue and then he had more books and then
4 eventually I made some toys and then people came and
5 wanted to put him on TV and make a video game, the way
6 that you sort of thought that you might have wanted to
7 do something at the beginning isn't necessarily how
8 you get there. So we all have ideas at the beginning
9 of what we want, but you break those rules to sort of
10 suit the needs of the wants of the fans and the
11 marketing you end up doing.

12 Q. And the exhibits on *Dark Ages* will show what they
13 show and we can direct the Court to the proper places
14 in subsequent briefing or however else. But would it
15 surprise you to see that *The Dark Ages* series, say,
16 begins in one century and then goes forward a couple
17 of centuries, then scoots backwards as far as 900 AD;
18 would that surprise you?

19 A. Not really.

20 MR. GRIMSLEY: No further questions.

21 THE COURT: Mr. Arntsen, anything else?

22 MR. ARNTSEN: That's all I have.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Anything else you want to put in

1 today?

2 THE WITNESS: Could I leave these here?

3 THE COURT: Just leave them here.

4 MR. ARNTSEN: Again, I think we have got an
5 agreement on the mechanics for exhibits.

6 MR. GRIMSLEY: Right, I think we do have an
7 agreement. There was one of the toys that was not
8 previously marked that we are going to add to the end
9 with an exhibit list, assuming you don't want the
10 physical items in the box. We had discussed
11 substituting a photograph of the toy to submit to you
12 as the exhibits.

13 THE COURT: All right.

14 MR. ARNTSEN: What we thought we would get
15 you, Your Honor, is a set of each of the exhibits, a
16 color copy of each of the comics, and give that to
17 you. Would you like that or would you like the
18 original comics separately? We thought we would give
19 you a binder that just had tabs with color copies of
20 everything.

21 THE COURT: Well, if the writing is legible,
22 the color would help a lot.

23 MR. ARNTSEN: There will be the color.

24 THE COURT: You know, otherwise it just looks
25 like a lot of lines. Just for the record, I want to

1 say that I show that 4 and 5 were never moved or never
2 talked about. I want to be sure this jibes with your
3 recollection.

4 MR. ARNTSEN: No, I did talk about Exhibit 4.
5 That was *Spawn* 26. We talked about it kind of right
6 at the end with Mr. McFarlane.

7 THE COURT: Okay.

8 MR. ARNTSEN: 5 was not talked about. Also,
9 from my list, I believe 15 wasn't talked about.

10 THE COURT: And I don't show anything about
11 7. Do you show something for 7?

12 MR. ARNTSEN: I think right at the end, *Spawn*
13 39, I believe I did.

14 THE COURT: I'm talking about exhibits
15 though.

16 MR. ARNTSEN: Yeah, Exhibit 7. Yes, that was
17 what had the quote of Angela being a major player in
18 the comic books right toward the end of his
19 examination.

20 THE COURT: What exactly is the exhibit?

21 MR. ARNTSEN: It is *Spawn* 39.

22 THE COURT: Okay. And that was
23 Mr. McFarlane?

24 MR. ARNTSEN: Yes.

25 MR. GRIMSLEY: There were several of the

1 issues of *The Dark Ages* that we did not talk about as
2 we went through.

3 THE COURT: I don't show Exhibit 15. Did
4 anyone talk about 15?

5 MR. ARNTSEN: No. 15 people did not talk
6 about.

7 THE COURT: Okay. And then 29 and 30?

8 MR. ARNTSEN: People did not, no. Those
9 weren't used either.

10 THE COURT: And 40?

11 MR. GRIMSLEY: 40 we didn't reference because
12 we had the actual toy in the courtroom.

13 THE COURT: Okay. And 45 and 46?

14 MR. GRIMSLEY: No, I don't believe we made
15 reference to them.

16 THE COURT: Okay.

17 MR. GRIMSLEY: On the latter point, I might
18 wish to still have them be part of the record, as we
19 can point the Court to things that are in the issues.

20 THE COURT: Any problem with that?

21 MR. ARNTSEN: I do not -- if they are comic
22 books, I don't have any problem.

23 THE COURT: What is 45?

24 MR. LEVIN: What is 45?

25 MR. GRIMSLEY: 45 is *Spawn Dark Ages* 36.

1 THE COURT: And 46?

2 MR. GRIMSLEY: Is *Spawn Dark Ages* Issue 7.

3 THE COURT: Okay. Did you want to do
4 additional briefing?

5 MR. GRIMSLEY: If Your Honor thought it would
6 be helpful, I think something short.

7 THE COURT: Very short.

8 MR. GRIMSLEY: You know, drawing on the
9 transcript of today.

10 MR. ARNTSEN: Mr. Simmons is doing -- Jeff,
11 what do you think you are doing, the closing?

12 MR. SIMMONS: It's up to the Court whether it
13 thinks it would be helpful or not. I don't know that
14 there are a lot of legal issues that need to be
15 briefed. I think this is mainly factual issues. The
16 facts are in the record. In closing, we can
17 rehighlight the facts if you think that would be
18 helpful.

19 THE COURT: Something in by a week from
20 Friday, each of you. Do you want to do it
21 concurrently or consecutively?

22 MR. SIMMONS: Concurrently.

23 MR. GRIMSLEY: I'm happy to do it
24 concurrently.

25 MR. SIMMONS: Concurrently, yeah, makes

1 sense.

2 THE COURT: A week from Friday, which is the
3 25th.

4 MR. GRIMSLEY: Would you like to set the page
5 limit on what you would like to read? You would
6 probably like to read zero.

7 THE COURT: I think a maximum of 15 pages.

8 MR. GRIMSLEY: All right.

9 THE COURT: All right. Anything else?

10 MR. GRIMSLEY: What is the highest exhibit
11 number you have having been referenced?

12 THE COURT: I have 47.

13 MR. GRIMSLEY: 47, okay, because we had other
14 *Dark Ages* issues all the way down through Exhibit 65
15 and then we were going to mark the toy.

16 THE COURT: Did you want to put the other
17 *Dark Ages* in?

18 MR. GRIMSLEY: That would be my preference.

19 MR. ARNTSEN: I don't have a problem with it.

20 MR. GRIMSLEY: Perhaps I can look and see if
21 there is just one or two that need to be in rather
22 than burdening the Court with a whole other binder,
23 but we can work that out.

24 THE COURT: And will you just work that out
25 this afternoon and leave whatever you want me to look

1 at?

2 MR. ARNTSEN: What we thought we would do is
3 put together a set of exhibits that we would get to
4 you that we would put them together. We would get
5 them to you by whenever you wanted them by.

6 THE COURT: Next Friday is fine.

7 MR. ARNTSEN: So the briefs -- you will get
8 the briefs and you will get a set of the exhibits.

9 THE COURT: Okay. That's fine.

10 MR. ARNTSEN: You will get a package.

11 THE COURT: Very good.

12 MR. GRIMSLEY: Thank you.

13 THE COURT: Court will adjourn.

14 (Adjourned at 3:09 p.m.)

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1 I, CHERYL A. SEEMAN, Certified Realtime and
2 Merit Reporter, in and for the State of Wisconsin,
3 certify that the foregoing is a true and accurate
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5 June, 2010, before the Honorable Barbara B. Crabb of
6 the Western District of Wisconsin, in my presence and
7 reduced to writing in accordance with my stenographic
8 notes made at said time and place.
9 Dated this 18th day of June, 2010.

10
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16 Cheryl A. Seeman, RMR, CRR
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